NIH Grants Administration Manual
4304-204A- Post Award: Construction, Modernization, or Alteration and Renovations of Research Facilities
ISSUING OFFICE: OER/OPERA (301) 435-0949
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1. Explanation of Material Transmitted: This new NIH Grants Administration Manual (NIH GAM) provides guidance to NIH program and grants management staff on the administration of NIH construction (funded under the C06 or UC6 activity code) and modernization (generally funded under the C06 and G20 activity codes) grants and cooperative agreements (hereafter referred to as "grants"). It also applies to major alteration and renovation (A&R), which are individual projects exceeding $500,000 in direct costs funded under a research project or other grant mechanism. A&R funded under a center grant is not subject to the requirements of this NIH GAM, regardless of the direct cost total. In addition, individual A&R projects costing $500,000 or less in direct costs generally are not subject to the requirements of this NIH GAM unless the A&R activity is considered "construction" or "modernization" (see E. Definitions). Policies governing the administration of minor A&R projects are located in their entirety in the NIH Grants Policy Statement (NIHGPS), "Selected Items of Cost." However, all NIH grant-related activities, whether or not they include construction or major A&R activities, are subject to the Federal historic preservation law as described in Section 106 of the National Historic Preservation Act of 1966 [see G. 2. e. (3) below]. The topics of equipment, supplies, inventions and patents and debt instruments, also included in HHS GPD 3.04 are addressed in NIH GAM 4304-204B, "Post Award: Equipment, Supplies, Inventions and Patents and Debt Instruments."

This NIH GAM implements Health and Human Services (HHS) and NIH regulations and those portions of HHS Grants Policy Directive (GPD) 3.04, "Property" that apply to construction and modernization grants and A&R. In addition, this NIH GAM is a supplement to the NIHGPS. This NIH GAM rescinds PHS Grants Administration Manual (PHS GAM) Parts 111, "Alteration and Renovation of Facilities with PHS Grant Funds Appropriated Under Discretionary Grant Programs Without Construction Authority;" 140, "Protecting the Federal Interest in Real Property Acquired with PHS Grant Support;" and 401-410, "Construction Grants."

2. **Filing Instructions:** Insert NIH Manual 4304-204A dated 9/10/2008.

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Office of Management Assessment, OM, on (301) 496-2832.
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A. PURPOSE: This NIH Grants Administration Manual (NIH GAM) provides guidance to NIH program and grants management staff on the administration of NIH construction (funded under the C06 or UC6 activity code) and modernization (generally funded under the C06 and G20 activity codes) grants and cooperative agreements (hereafter referred to as "grants"). It also applies to major alteration and renovation (A&R), which are individual projects exceeding $500,000 in direct costs funded under a research project or other grant mechanism. A&R funded under a center grant is not subject to the requirements of this NIH GAM, regardless of the direct cost total. In addition, individual A&R projects costing $500,000 or less in direct costs generally are not subject to the requirements of this NIH GAM unless the A&R activity is considered "construction" or "modernization" (see E. Definitions). Policies governing the administration of minor A&R projects are located in their entirety in the NIH Grants Policy Statement (NIHGPS), "Selected Items of Cost." However, all NIH grant-related activities, whether or not they include construction or major A&R activities, are subject to the Federal historic preservation law as described in Section 106 of the National Historic Preservation Act of 1966 [see G. 2. e. (3) below]. The topics of equipment, supplies, inventions and patents and debt instruments, also included in HHS GPD 3.04 are addressed in NIH GAM 4304-204B, "Post Award: Equipment, Supplies, Inventions and Patents and Debt Instruments."

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B. BACKGROUND: Over the last several years, NIH has experienced a significant expansion of its construction and modernization programs. The NIHGPS includes guidance and the award terms and conditions for construction and modernization grants and A&R activities funded as part of a grant. General extramural policies are adequately covered under the NIHGPS and are not repeated in this NIH GAM, although in several sections there are references to the NIHGPS, specifically the sections entitled "Construction, Modernization or Major Alteration and Renovation of Research Facilities," and "Selected Items of Cost, Alteration and Renovation" as a source for additional information. However, NIH has determined that additional internal guidance is necessary for program and grants management staff responsible for the solicitation, award, and management of grants involving construction, modernization, and major A&R projects. This NIH GAM should be used in conjunction with the NIHGPS for a complete understanding of the requirements.

C. POLICY:

1. Institutes and Centers (ICs) program and grants management staff are required to comply with the policies and procedures contained in this NIH GAM unless a deviation has been approved in accordance with the OER Policy Announcement 1997-02 dated January 30, 1997.

2. Individual programs are permitted to supplement both the extramural and internal guidance as long as that supplemental guidance is consistent with and does not deviate from the requirements of the NIHGPS and this NIH GAM.

3. An IC may fund minor A&R costs when allowed based on the type of grant or recipient. An IC must have statutory authority to fund construction or modernization grants or major A&R projects. If authorized by statute, NIH ICs may make awards for or fund costs associated with the following:

    - Grants for construction of a new building,
    - Grants for modernization of existing research facilities,
    - Major A&R projects under a grant if the type of grant/mechanism allows such activity.

D. REFERENCES:

1. National Center for Research Resources authorizing legislation – Sections 481A and 481B of the Public Health Service Act, as amended by Sections 303 and 304 of Public Law 106-505 (42 U.S.C. 287a-2 and 287a-3)

2. Sections 301 and 405 of the Public Health Service Act, as amended (42 U.S.C. 241 and 284)

3. 42 CFR Part 52a, National Institutes of Health Center Grants

4. 42 CFR Part 52b, National Institutes of Health Construction Grants

5. 45 CFR Part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations

6. 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments

7. Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970

8. Executive Order 12372, Intergovernmental Review of Federal Programs, July 14, 1982

9. Executive Order 13287, Preserve America, March 3, 2003

10. Office of Management and Budget (OMB), Intergovernmental Review (State Single Point of Contact (SPOC) List)

11. NIH Grants Policy Statement (2003 version or its successor)

12. NIH Delegation of Authority 1130, Program: Grants and Awards 01 Grants-in-Aid

13. NIH Manual Chapter 1743, "Keeping and Destroying Records"

14. HHS GPD Part 2.03, Information for Potential Applicants Competing for Grants

15. HHS GPD Part 3.02, Matching and Cost Sharing

16. HHS GPD Part 3.04, Property

17. NIH Design Policy Guidelines (issued by the Office of Research Facilities Development and Operations)

18. OER Policy Announcement 1997-02, Single-Case Deviation from PHS/NIH Grants Policy, January 30, 1997

E. DEFINITIONS:

This NIH GAM uses the following definitions:

1. *Construction*: Construction of a new building or the modernization of, or completion of shell space in, an existing building (including the installation of fixed equipment, but excluding the cost of land and off-site improvements). The construction of "shell" space is not allowable as a construction activity since that space does not provide usable space for research activities.

2. *Modernization*: Alteration, renovation, remodeling, improvement, expansion, and/or repair of an existing building and the provision of equipment necessary to make the building suitable for use by a particular program.

3. *Major A&R*: An A&R project under a grant whose primary purpose is other than construction or modernization, including a project involving modernization, improvement or remodeling, exceeding $500,000 in direct costs. Major A&R is an unallowable activity or cost under foreign grants and domestic grants with foreign components.

4. *Minor A&R*: An A&R project under a grant whose primary purpose is other than construction or modernization, including a project involving improvement or remodeling, which does not exceed $500,000 in direct costs. Minor A&R is not an allowable activity or cost under grants to individuals or grants for limited purposes, such as grants in support of scientific meetings (conference grants). Routine maintenance and repair of the organization's physical plant or its equipment is not considered A&R; these types of costs are typically treated as facilities and administrative (F&A) costs. If the A&R activity will affect a site listed in (or eligible for inclusion in) the National Register of Historic Places, the requirements specified in G. 2. e. (3) below must be followed. Policies for individual A&R projects that are treated as direct costs and that will not exceed $500,000 are located in their entirety in the NIHGPS, "Selected Items of Cost" and the section entitled "Construction Grants, Administrative Requirements, Prior-Approval Requirements, Alteration and Renovation Projects under Nonconstruction Grants."

F. RESPONSIBILITIES:

The following NIH officials/offices/functions have responsibilities for construction and modernization grants and major and minor A&R projects as specified.

1. *Grants Management Officer (GMO):* The GMO is the NIH official responsible for the business management and other non-programmatic aspects of grants. Specific responsibilities associated with the award of construction or modernization grants or grants involving major A&R projects include review of the funding opportunity announcement and program guidelines; administrative review of applications for compliance with statutes, regulations, policies, and guidelines; and ensuring post-award and post-grant (post-closeout) compliance, including monitoring facility usage requirements and timely receipt of documents and reports required of grantees. The GMO also ensures that systems are in place to monitor any required post-performance compliance, *e.g.*, reporting of income received after the period of support, continued use of the facility for purposes consistent with those of the award, and recoupment of the Federal share of sales proceeds or amortized value. When minor A&R funds are involved, the GMO ensures the allowability of costs and ensures that the A&R activity meets the criteria outlined in the NIH GPS. The GMO is the NIH official with authority to obligate/release grant funds and remove restrictions imposed by NIH following the approval of the grantee's working drawings and specifications.

2. *Grants Management Specialist (GMS):* The GMS is an agent of the GMO and is assigned responsibility for the day-to-day management of grants. The GMS is responsible for completing the grants management checklist (see Appendix III) prior to preparing a Notice of Award (NoA) for a construction or modernization grant or another type of grant that includes funding for major A&R. When minor A&R costs are involved, the GMS is responsible for ensuring the allowability of A&R costs and that the A&R is consistent with the criteria and documentation requirements outlined in the NIHGPS, "Selected Items of Cost" and the section entitled "Construction Grants, Administrative Requirements, Prior-Approval Requirements, Alteration and Renovation Projects under Nonconstruction Grants." The GMS is responsible for obtaining architectural/engineering advice from the responsible IC program official or utilizing the services of expert consultants, including those located in the Office of Research Facilities Development and Operations (ORF), to review minor A&R documentation submitted by applicants/grantees, as needed.

3. *Program Official (PO):* The PO is the NIH official responsible for the programmatic, scientific, and/or technical aspects of assigned applications and grants. Specific responsibilities associated with the award of construction or modernization grants or grants involving major A&R projects include the development of the funding opportunity announcement and program guidelines;

coordination with the Scientific Review Administrator in the review of applications; addressing the questions outlined in the Program checklist (see Appendix IV) prior to the issuance of an award; post-award monitoring of the progress of the construction, modernization, or major A&R activity and review of documents submitted by grantees, including working drawings and specifications, prior-approval requests, and reports; and post-grant (post-closeout) activities, such as reviewing alternate usage requests during the period for which the grantee remains accountable for usage. Where needed expertise is not available within the IC, the PO may elect to use the services of expert consultants, including those located in the ORF or an outside architectural and engineering (A&E) firm, to review construction-related documents submitted by applicants/grantees.

4. *Scientific Review Officer (SRO):* SROs are health science administrators who manage the activities of Scientific Review Groups (SRGs). For the SRG for which he or she is responsible, the SRO reviews applications for completeness and conformity to NIH requirements; ensures that adequate numbers of reviewers with appropriate expertise are available for application review; assigns applications to individual reviewers as discussion leaders and for preparation of written critiques; and serves as the overall point of contact with applicants during the initial phase of the peer review process, *i.e.*, until the conclusion of the SRG meeting. Construction and modernization grant applications generally are reviewed by an IC SRG rather than by a Center for Scientific Review (CSR) SRG.

5. *Office of Research Facilities Development and Operations:* ORF is the NIH office responsible for all aspects of facility planning, construction, renovation, and maintenance of NIH facilities. ORF is responsible for development and maintenance of the *NIH Design Policy and Guidelines*. The *NIH Design and Policy Guidelines* are being revised and are expected to be published no later than September 2008 under the new name, "*NIH Design Requirements Manual."* The PO may ask ORF to conduct the review of working drawings and specifications for NIH-funded construction, modernization, or major A&R projects. ORF, in consultation with the PO, may work directly with the grantee in preparing and submitting acceptable required working drawings and specifications for NIH approval. In addition, ORF is required to return the working drawings and specifications to the IC GMO for filing in the official grant file (See Section I. Records Retention and Disposal).

G. PROCEDURES:

1. ***PRE-AWARD ACTIVITIES***

a. **Program Planning**: In planning a construction or modernization grant program, the PO, in consultation with the GMO and SRO, shall ensure the following:

(1) That the program is implemented consistent with the authorizing statute and other applicable statutes, regulations, and policies, including seeking advice from the Office of the General Counsel (OGC) as necessary;

(2) Adequate consideration is given to the appropriate award instrument (see discussion below regarding "Support Mechanism");

(3) Funding opportunity announcements and application instructions are compliant with statutory, regulatory, and policy requirements and are complete and clear;

(4) Maximum feasible opportunity is provided to applicants to prepare and submit high-quality applications;

(5) Adequate time is available for peer review; and

(6) Sufficient time is available to complete any required environmental and historic preservation reviews and prepare a NoA protecting the Federal government's interests in the property.

b. **Funding Opportunity Announcement** (FOA): In developing the FOA (Request for Applications [RFA] or program announcement [PA]) for a construction or modernization program, the PO, in consultation with the GMO, must consider the following and address each consideration in the FOA, as appropriate. Consideration of these issues in advance of developing the FOA will expedite its issuance. This section also addresses applicable requirements for major A&R projects.

(1) *Type of Funding Opportunity Announcement*: Construction and modernization grants may be awarded in response to an RFA or PA. However, because funding for construction and modernization programs is typically limited to availability in the current fiscal year (FY), an RFA generally should be used to solicit construction or modernization grant applications.

(2) *Authorizing Legislation, Appropriations Act, and Regulatory Requirements*, including funds availability, program objectives, matching requirement (see below), and eligibility.

(3) *Support Mechanism*—grant or cooperative agreement: If substantial programmatic involvement by NIH staff in the construction or modernization activity is anticipated, the IC should use a cooperative agreement. Review and approval of working drawings and specifications and routine monitoring of construction or modernization activity are not considered substantial programmatic involvement and, therefore, do not of themselves require use of a cooperative agreement.

(4) *Eligibility:*

(a) Unless limited by the authorizing statute, public and private nonprofit organizations located in the United States or in U.S. territories or possessions generally are eligible for construction and modernization grants. If a program chooses to limit eligibility beyond that specified in the statute, a justification for limited competition is required. For-profit organizations, foreign organizations and Federal institutions are not eligible for construction or modernization grants.

(b) Because IC review and approval of final architectural drawings and specifications is required, applicants may not submit applications for construction or modernization grants that were advertised or put out for bid or where construction or modernization is underway at the time of application. For major A&R projects, if these activities occur before award or approval of the project, the associated costs will not be allowable.

(c) Generally, projects should not be advertised or put out for bid before the expected start date of the award; however, in exceptional cases, NIH may approve the start of the activity after submission of the application but before the date of the award (see G.2.a., "Award Activities —Construction/Modernization/A&R Status" below).

(5) *Unallowable Activities:* A&R (major or minor) is not an allowable activity under grants to Federal institutions. Major A&R is not an allowable activity under foreign grants or domestic grants with foreign components.

(6) *Use of SF 424 R&R*: Applicants will be instructed in the FOA whether to use the SF 424 (R&R) for NIH construction or modernization projects as well as for requests for support of major A&R projects. The applicant must download the application package and instruction for a specific FOA through the NIH Guide for Grants and Contracts or the Grants.gov APPLY web site. The SF424 "family" of forms can be found at: http://apply07.grants.gov/apply/FormLinks?family=15.

(7) *Intergovernmental Review under Executive Order (EO) 12372*: FOAs that announce the availability of construction or modernization grants or funding for major A&R support must include language specifying that applications submitted under that FOA are subject to EO 12372 as implemented by the State in which the applicant is located. The IC should consider the time associated with the State Single Point of Contact (SPOC) review of applications (60 days from the established deadline date for receipt of applications) when determining the schedule for application receipt, review, and award. Applicants must transmit any comments resulting from the State's review to the IC. Comments should be submitted with the application or as soon as they are received if the application has already been submitted.

States may choose not to participate in the intergovernmental review process and, in those cases, will not have a SPOC. In other cases, States with SPOCs may choose to exclude applications under particular programs from SPOC review. The list of SPOCS can be found at http://www.whitehouse.gov/omb/grants/spoc.html. For guidance on responding to comments or accommodating intergovernmental concerns, IC staff should refer to 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Note: This Executive Order (EO) is applicable to the G20 program only if the FOA invites applications that involve major A&R.

(8) *Matching*:

(a) The FOA must explicitly state if matching will be required under a construction or modernization grant. If matching is required, the announcement must state the manner in which proposed matching or cost sharing will be evaluated in the peer review process.

(b) The FOA also must specify whether any required matching must be in the form of allowable costs incurred by the grantee or a contractor under the grant or the value of third-party in-kind contributions to meet a matching requirement (if authorized). Third-party in-kind contributions are the value of goods and/or services third parties donate for program or project purposes without charge to a recipient (or subrecipient or cost-type contractor under a grant). NIH generally does not allow grantees to use the value of third-party in-kind contributions to meet a matching requirement.

(c) Applicants must be instructed to identify the source and amount of funds proposed to meet the matching requirement in the application. The authorized organizational representative must assure that the identified matching is or will be available for the grant should it be awarded. To be allowable as matching, costs and in-kind contributions (if authorized) must meet the allowability and documentation requirements of 45 CFR 74.23 or 45 CFR 92.24, as applicable.

(d) Examples of allowable matching include institutional reserves, donations, bonds, or pledges. If the matching is in the form of pledges, a statement from the bank or lending institution as to the discounted value should be submitted along with a statement that there are sufficient institutional funds available should the pledges not materialize. If the matching funds are contingent, a description of the contingency should be included. If appropriations from State or local governments are available or will be available as part of the match, the amount and date of availability should be included. Other sources of matching, such as bonds or mortgages, should be described.

(e) Federal funds received by the applicant/recipient under another Federal assistance award may not be used to meet any part of the matching share unless the authorizing legislation for such funds permits such usage.

(f) GPD Part 3.02 and NIH GAM 4302.202 provide additional guidance on matching.

(9) *Operation of Facility*: The applicant must be instructed to address in the application the availability of funds for operation of the facility throughout the usage period to ensure the effective use of the facility for the intended purposes.

(10) *Special requirements* include, but are not limited to, the following:

(a) *NIHGPS:* Indication that the NIHGPS section, *Construction, Modernization or Major Alteration and Renovation of Research Facilities,* is applicable and will be included as a term and condition of award.

(b) *National Environmental Policy Act of 1969* (NEPA), including Public Disclosure, Section 102 of NEPA and EOs 11514 and 13287: It is the IC's responsibility to determine the applicability of NEPA. Applicants may use the "Review of Environmental and Other Impacts" document (see Appendix 1) to assess the environmental impact associated with

the proposed project. The following language shall be included in FOAs for construction or modernization grants or that may provide funding for major A&R projects:

> "NIH must comply with the National Environmental Policy Act of 1969 (NEPA) for any actions using NIH funds or property that may affect the environment. Because projects for construction, modernization, or major A&R activities have the potential to affect the environment, NIH requires that applicants for this type of support provide information on anticipated environmental impact as part of their applications. Applicants may use the "Review of Environmental and Other Impacts" document that is available at (http://www.ncrr.nih.gov/research_infrastructure/environmental_analysis_suggested_checklist.pdf) as part of the application package to supply this information. An alternate format can be used as long as equivalent environmental and other impacts information accompanies the application."

NIH will review the information on anticipated environmental impacts contained in the application to assess the level of environmental impact of the proposed project. It is the responsibility of NIH to determine which of the following will apply to the proposed project:

- Environmental Impact Statement (EIS): a document required of federal agencies by NEPA for major projects or legislative proposals significantly affecting the environment. A tool for decision making, it describes the positive and negative effects of the undertaking and analyzes reasonable alternative actions and mitigation measures.

- Environmental Assessment (EA) An environmental analysis prepared pursuant to the NEPA to determine whether a federal action would significantly affect the environment and thus require a more detailed environmental impact statement.

- No Further Action is Required.

If NIH determines that an EIS or EA is required, the applicant (recipient) must conduct the appropriate environmental review and provide the necessary documentation to NIH for review, approval, and further processing. NIH will provide advice and assistance to the applicant (recipient), as necessary, concerning review procedures; evaluate the results of the review; and make the final decision on environmental impact as required by NEPA.

Applicants also must (1) provide a current listing and copies, as applicable, of all relevant licenses, permits, and/or other approvals required (these would include, but would not be limited to, the state and local air, water quality, and zoning board reports), and (2) indicate the state, local, and regional planning authorities contacted or consulted regarding the application and briefly discuss the proposed facility with respect to regional development plans.

Applicants are not required to incur costs for extensive consultant services at the application stage; therefore, hiring of consultants to develop detailed data and elaborate presentations is discouraged and such costs generally will not be allowable as pre-award costs."

(c) *National Historic Preservation Act, Archaeological and Historic Preservation Act of 1960, and EO 13287*: Under the provisions of the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*), the Archaeological and Historic Preservation Act of 1960, as amended (16 U.S.C. 469a-1 *et seq.*), and EO 13287, the Secretary of the Interior has compiled a National Register of Historic Places—sites and buildings of significant importance to U.S. history[1]. These statutes require that, before approval of a grant related activity, NIH take into account the effect on these sites of the proposed activity. NIH is primarily responsible for determining whether activities will affect a property listed in the National Register or one that meets the eligibility criteria for inclusion, even if not included in the National Register at the time the application is submitted (see NIHGPS).

(d) *Individuals Eligible to Serve as the Project Director/Principal Investigator (PD/PI) on Construction or Modernization Grant Applications*: The FOA shall include any special eligibility criteria for individuals to serve as the PD/PI. Generally, the individual who serves as the PD/PI should be a senior institutional official (e.g., Dean or Vice President of Research) who has responsibility for the oversight of institutional research as well as the authority to commit institutional funds and resources.

(e) *Program-specific Design Requirements*: The IC shall consider the need for inclusion of special design requirements to ensure that the

[1] This list may be obtained from the State Liaison Officers designated by their respective states to administer this program or from the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, Washington, DC 20004 (telephone: 202-606-8503; website: http://www.achp.gov/). The National Trust for Historic Preservation is located at 1785 Massachusetts Avenue NW, Washington, DC 20036 (telephone: 202-588-6000; website: http://www.nationaltrust.org/).

facility will support the intended research activity. For example, bio-containment facilities and research support laboratories must be designed to maximize safety in the work space and surroundings. Thus, stringent security and access control may need to be provided for the building. If so, these requirements must be communicated in the FOA so that the applicant can include the necessary costs in the application budget and describe in the application narrative how it plans to meet the required measures.

(f) *Insurance Requirements:* Information about the title and physical insurance requirements that will be required as a condition of the award (see NIHGPS and paragraphs 2.o. "Title Insurance" and q. "Physical Destruction Insurance" of this NIH GAM).

(11) *Review Criteria*: The FOA must clearly state the criteria by which applications will be evaluated. 42 CFR 52b.5 sets forth the criteria pursuant to which NIH must evaluate applications for construction grants. NIH review criteria and selection factors generally include:

- The priority score assigned to the application by an NIH peer review group;
- Scientific merit of the research activities that will be carried out in the proposed facility.
- The administrative and leadership capabilities of the applicant's officers and staff.
- The relevance of the project for which construction is proposed to the objectives and priorities of the particular program authorized by the Public Health Service Act.
- Research and financial need for the project and the need for appropriate geographic distribution of similar facilities.
- Scientific or professional standing or reputation of the applicant and of its existing or proposed PD/PI, officers and research staff.
- Relationship to the applicant's overall research programs and impact on relevant research programs and facilities in the geographic area and nationwide.
- Availability, by affiliation or other association, of other scientific or health personnel and facilities to the extent necessary to carry out the

proposed research program for the facility, including, when warranted, the adequacy of a biohazard control and containment program.

- Project cost and design.

Because the construction grant regulations found at 42 CFR 52b do not apply to minor A&R funded under a research project grant, the standard peer review criteria (significance, approach, innovation, investigator, and environment) should be applied to such grants. Similarly, the construction grant regulations do not apply to A&R funded under an NIH center grant. Thus, a major A&R project requested as part of a center grant would be reviewed using the published review criteria for the center grant program, which may or may not include specific criteria for the review of a major A&R project.

(12) *Review Process - Peer Review*: Construction and modernization grant applications are subject to the NIH peer review process. Major A&R projects under grant applications also are subject to peer review because they are part of an overall application (or subsequent change in scope) that is subject to peer review. The review of these latter applications will follow normal CSR/IC procedures, as applicable. However, in these cases, the SRO should involve individuals with expertise necessary to evaluate the proposed A&R activity.

(13) *Documentation Requirements:* The FOA must clearly specify documents required for submission with the application as well as those that will be required as a condition of the award (see Section I. Records and Retention and Disposal). Construction or modernization applications typically require the following:

- Working drawings and specifications.
- Narrative description of proposed utilization of space.
- Detailed description of floor plan.
- Detailed cost estimate.
- Identification of special design problems.
- Description of existing utility systems and those proposed for new or modified space.
- Plans for handicapped accessibility.
- Description of safety criteria accommodated in the existing building and in the facility as modified.
- If property is leased, statement and documentation of length of lease.

- If the space represents a portion of the building, a description of the precise location of the grant-supported space.
- Time schedule for each major activity in the project.

(14) *Title to Site*: The FOA must instruct the applicant to include with the application a legal opinion describing the interest the applicant has in the performance site. The legal opinion should describe any mortgages or other foreclosable liens on the property, including the principal amount of the mortgage (and rate of interest); the dates of the mortgage; the terms and conditions of repayment; the appraised value of the property; and any provisions designed to protect the Federal interest in the property.

(15) *Post-construction Activities and Closeout*: The FOA should include information on close-out requirements and post-grant activities, i.e., facility usage requirements and monitoring facility usage compliance, if they differ from those contained in the NIHGPS.

c. **Program Guidelines**: If an IC issues program guidelines to supplement the FOA with detailed policy or procedural information for a construction or modernization grant program, these guidelines must be referenced in the FOA and the NoA.

2. ***AWARD ACTIVITIES*** (see sample PO and GMS checklists in Appendixes 3 and 4)

a. **Construction/Modernization/A&R Status**: Prior to issuing an award, IC staff shall assess the status of the proposed construction, modernization, or major A&R activity to ensure the project's continued eligibility, i.e., the project should not normally have started nor should the project be advertised or put out for bid before issuance of the NoA until the grantee receives NIH approval of required design documents. On an exceptional basis, and with single-case deviation approval from the Chief GMO, the IC may approve the start of a construction, modernization, or major A&R activity prior to issuance of award. However, all terms and conditions of award that would otherwise apply to the award apply even in the absence of an award, e.g., the applicant must submit final working drawings and specifications for IC approval. Also, if this approval is granted, the applicant must use matching funds to cover all costs for construction, modernization, or major A&R that are incurred in advance of the effective date of award.

b. **Single Point of Contact Comments** (SPOC): The SPOC approval letter must be in the official file for applications subject to EO 12372.

c. **Title to Site**: The GMO is responsible for reviewing the legal opinion submitted with the application describing the interest the applicant has in the performance site. If the applicant has fee simple title (absolute ownership of real property in which the owner has the right to control, use and transfer the property at will) to the site, the legal or title opinion may simply state that the applicant holds fee simple title to the site free of all mortgages or other foreclosable liens to all land, rights-of-way, and easements necessary for the project. However if the applicant does not have a fee simple or other estate or interest in the site, the applicant must be able to ensure that the grant-supported space will be used for its intended purpose for the period of Federal interest (e.g., usually 20 years). In those cases where the site and/or building is leased, the legal opinion should show that an undisturbed lease agreement exists that would extend for the period of Federal interest and that the terms of the lease do not preclude construction or post-occupancy activities proposed in the application.

d. **Budget**: The IC must review the estimated project costs to verify that all proposed budget items are allowable, reasonable, allocable, and necessary as specified in the NIHGPS and applicable cost principles.

e. **Special Requirements**:

(1) *NEPA:* If NIH determines that NEPA applies to the grant-supported activities, the environmental aspects of the activity must be reviewed and evaluated by NIH before final action on the application. As provided in the FOA, the application must be accompanied by the "Review of Environmental and Other Impacts" document or equivalent information to facilitate review and evaluation for environmental concerns before approval or other action on the application. This review also includes determinations concerning floodplain management pursuant to EO 11988, Floodplain Management (May 24, 1977) (3 CFR, 1977 Comp., p. 117) and EO 11990, Protection of Wetlands (May 24, 1977) (3 CFR, 1977 Comp., p. 121).

If, on the basis of the information provided by the applicant, NIH determines that there may be an environmental impact, the following activities should occur:

(a) The applicant/recipient should be directed to prepare (or engage a contractor to prepare) an Environmental Assessment (EA) and submit the first draft to the NIH PO. The draft EA is normally circulated within the NIH, including ORF, for review and comment. Public notification may be required by the individual State's requirements. The NIH may also direct an applicant/recipient to skip the EA

preparation and proceed directly to preparing an Environmental Impact Statement (EIS) (see h).

(b) The PO will coordinate the review of the draft and provide consolidated comments to the applicant/recipient.

(c) Taking the NIH's comments into account, the applicant/recipient submits an electronic copy of the final draft EA to the PO, who ensures that all comments have been addressed.

(d) When the PO advises the applicant/recipient of the acceptability of the final draft EA, he or she will provide further instructions, e.g. required number of copies to submit to the PO.

(e) The NIH office/official responsible for environmental matters shall forward copies of the final draft EA to the State and any other stakeholders that need to review and comment on the draft EA and will be the focal point for receipt of comments.

(f) Once those comments are shared with the applicant/recipient, the applicant/recipient will be expected to incorporate them, responding to them appropriately.

(g) The applicant/recipient must submit final copies of the EA to the PO, who will provide them to the NIH environmental office/official.

(h) The NIH environmental office/official will prepare the Finding of No Significant Impact (FONSI) or memo of decision to prepare an EIS and provide the IC with the final letter of acceptance, which is then forwarded to the applicant/recipient.

(2) *Public Disclosure Requirement*: The GMO is responsible for ensuring that the applicant has publicly disclosed the project and described its environmental impact in a newspaper or other publicly available medium prior to the issuance of an award pursuant to EO 11514.

(3) *National Historic Preservation*: If NIH determines that a grant related activity may affect an historic property or a potentially eligible historic property, NIH must follow the procedures indicated in Section 106 of the National Historic Preservation Act of 1966 and must consult with the NIH Federal Preservation Coordinator as well as the cognizant State or Tribal Historic Preservation Officer and obtain public input as required by this

statute (see NIHGPS). If a designated historic property will be affected, the applicant must be instructed to obtain clearance from both the appropriate State Historic Preservation Office and Tribal Historic Preservation Office before submitting the application. The State Historic Preservation Liaison Officer or the National Trust for Historic Preservation may be contacted for additional details. If it is determined that the proposed project will have an adverse effect on the site, NIH must negotiate an appropriate mitigation plan before it may fund the project.

(4) *Applicant/recipient compliance with other applicable public policy requirements* as contained in the NIHGPS, e.g., civil rights, debarment, and lobbying.

f. **Operation of Facility**: The GMO, in consultation with the PO, shall review the adequacy of the applicant's response regarding the availability of funds for operating the facility for the duration of the required usage period.

g. **Overlap**: The GMO, in consultation with the PO, must determine if the application overlaps with any other Federal or non-Federal effort and/or support. In the event they determine there is overlap, based on the application or additional information requested from the applicant, NIH shall negotiate with the recipient to restructure the project, if possible. NIH may not fund a grant or project where there is (or there is the potential for) duplication of funding.

h. **Certificate of Need**: The PO must determine if Certificate of Need (CON) requirements apply in the State in which the facility is located and, if so, whether the applicant has received a CON. A CON is issued as the result of a regulatory process that requires certain health care providers to obtain state approval before offering certain new or expanded services. The CON process is intended to help ensure that new services proposed by health care providers are needed for quality patient care within a particular region or community. Health providers requiring a CON for certain types of projects include hospitals that may receive NIH grants for construction or modernization. CON review covers not only new facility construction but also initiation of specialized hospital services, bed conversions, increases in the number of inpatient beds, and a variety of other projects which could significantly affect services or costs. Renovations to existing health care facilities that do not involve the addition of beds or services are not subject to a CON process.

i. **Matching**: The GMO, in consultation with the PO, reviews application submissions to verify compliance with the matching requirement as specified in the FOA. This includes determining that Federal funds under another Federal assistance award will not be used to meet any part of the matching

share unless the authorizing legislation for such funds permits this usage. If it is determined that the applicant's assurance of the availability of matching is insufficient and more certainty is required, the GMO shall contact the applicant to request updated matching documentation.

If the applicant is requesting support for only a portion of the total construction project (for example, the renovation of two floors out of six), the GMO must obtain assurance that funds for the other portion of the project are available. Lack of funds for non-NIH supported space might delay the completion of the NIH portion of the facility.

j. **Expanded Authorities:** Construction, Modernization or Alteration and Renovation awards generally do not permit the awardee to extend the final budget period of a project period without NIH prior approval. NIH retains this authority to consider extension requests due to the limitations imposed on the use of obligated Federal funds under Title 31 USC, Subtitle II, Chapter 15, Subchapter IV, Section 1552. Therefore, the terms and conditions of the award, must communicate this prior approval requirement as noted below.

k. **Notice of Award**: The budget period and project period dates will be the same for a C06, UC6, and G20 award because these are not funded under the project period system, i.e., they do not involve continuation awards. The budget period/project period dates for a construction or modernization grant can extend beyond a one year period. Major A&R projects funded as part of a grant mechanism are subject to the traditional budget and/or project period system of funding. The NoA must reflect both the Federal and any non-Federal (matching) share of the total allowable costs.

Terms and Conditions: The GMO, in consultation with the PO, must ensure that each award includes appropriate terms and conditions (see sample terms and conditions in Appendix 5). Because the NIHGPS is a term and condition of the award, the requirements it contains generally need not be repeated in the award unless there is a program-specific or award-specific need to include additional or clarifying information. For example, the requirements for filing the Notice of Federal Interest (NFI) and for physical destruction and title insurance are detailed in the NIHGPS and need not be repeated in the award unless the GMO determines that repeating the information is necessary to assure protection of NIH's interests. The duration of the required usage period (usually 20 years), which is not specified in the NIHGPS, needs to be addressed in each award.

The terms and conditions of award shall include, but are not limited to, the following:

(1) The estimated date the construction contract will be signed;

(2) The estimated date of construction completion;

(3) Estimated cost of the proposed construction, modernization, or major A&R project and how/when funds will be released for expenditure;

(4) Amount of space (net square feet/meters) affected by construction, modernization, or major A&R;

(5) Description of the program areas to be supported under the award;

(6) Matching requirement, if any;

(7) Information on the release of funds based on milestones and/or the reimbursement of allowable costs incurred prior to approval of working drawings and specifications;

(8) Usage requirement;

(9) Prior approval requirement to seek an extension without additional funds or if an extension would not be permitted due to the five-year limitation on the use of obligated funds, the NoA should include an informational term to advise the awardee to fully expend awarded funds by June 30 of the last year of support.

(10) Use and disposition of any grant-related program income;

(11) Record retention requirements; and

(12) The requirement for the recipient to sign the award to accept it and its terms and conditions.

l. **Usage Requirement:** While some authorizing statutes do establish an end point beyond which further accountability is not required, the provisions of 45 CFR Part 74 do not themselves establish a specific end point for accountability. However, if, pursuant to 45 CFR 74.32(b), a recipient no longer needs the real property for the purpose of the original project, and use in other Federally sponsored projects and programs or sale is not a feasible alternative or is not in the best interests of the program, the IC Chief GMO may issue a revised NoA to authorize the recipient to use the property for alternative activities. The Chief GMO's written determination should be

supported by facts and supporting rationale specific to that grant. While this approval may indicate that the IC will no longer monitor the recipient's use of the property, the NFI in the property must remain (see below). See the sections under "5. *POST-GRANT ACTIVITIES"* found at "a. Monitoring Facility Usage Compliance" and "b. Alternate Usage" for additional information related to an alternate use of the facility and prior approval requirements.

m. **Notice of Federal Interest**:

(1) Immediately after the grantee signs the contract to begin construction, modernization, or major A&R activity or formalizes in writing the determination to use force account labor (the grantee's own personnel and equipment), the grantee must file the NFI. While the requirement to file an NFI has been required by Public Health Service and NIH grants policies since the 1980s, it became a regulatory requirement in 45 CFR 74.37 for those organizations subject to 45 CFR Part 74 in 1994 (59 Fed. Reg. 43754-01 (August 25, 1994) (codified at 45 CFR Part 74)). For all other grantees, it remains a policy requirement. Associated fees for filing the NFI are allowable costs.

(2) The NFI is a document filed in the local land records in the jurisdiction in which the property is located to place a lien on the property to ensure compliance with the facility usage requirement. The principal intent of the NFI is to ensure that the Federal interests in the property are not subordinated to those of non-Federal parties. The NFI must accurately indicate that the property was constructed, modernized, acquired, or improved with NIH funds and that, during its useful life as defined in the NFI, NIH's use and disposition requirements apply. See samples in Appendix 5, Terms and Conditions of Award, and Appendix 6, Notice of Federal Interest Letter.

(3) The NFI protects NIH's interest in the grant-supported property should the grantee want to sell, lease, or mortgage the property during the period of Federal interest. The Federal interest in real property may not be conveyed, transferred, assigned, mortgaged, leased, or otherwise be encumbered or subordinated by a recipient unless a deviation is approved by the IC Director or designee.

n. **Leased Property**:

(1) Construction, modernization, or major A&R may be performed on leased property only in exceptional circumstances and must be approved in advance by the IC Chief GMO. If approved, the grantee must be advised

through the NoA of both its responsibilities and liabilities for that property under the grant and how they relate to the interests of others with a financial interest in the property.

(2) The general requirement is that the holder of each existing lien on the property must agree to subordinate its interests to the Federal government. If this is not feasible, the lessor must agree to include, in the lease, clauses that indicate (a) the continued rights of the grantee and NIH in the event that the lessor of record changes, whether by sale, foreclosure, or otherwise, as in effect before such a change, and (b) if the Chief GMO agrees, at lease initiation, that if NIH's interests are subordinated (whether based on present or future conditions), the lessor and all lienholders must warrant that the grantee's full use of and access to the premises during the term of the lease (and under the conditions provided therein) shall not be infringed as a result. If the grantee cannot obtain such agreements or the lessor does not agree to these lease provisions, a deviation must be obtained from the Chief GMO.

(3) The NFI (or equivalent language) shall be a part of the lease, whether a provision of a new lease or an amendment to an existing lease and be agreed to by both the grantee and the lessor. The NFI language must be submitted to the Chief GMO for approval as part of the documentation required to obtain prior approval for leasing, or, in the event that timing is not practical, before the recipient can draw down funds from the Payment Management System or be reimbursed, as applicable. The NFI/lease language shall provide that: (a) the grantee agrees not to sublease, assign, or otherwise transfer the leased property, or use the property for a non-grant-related purpose(s) without the written approval of the Chief GMO (at any time during the term of the lease, whether or not grant support has ended); (b) the lessor will inform the awarding office of any default by the grantee under the lease; (c) the NIH IC shall have 60 days from the date of receipt of the lessor's notice of default in which to attempt to eliminate the default, and that the lessor will delay exercising remedies until the end of the 60-day period; (d) the NIH IC may intervene to ensure that the default is eliminated by the grantee or another grantee named by the awarding office; (e) the lessor shall accept payment of money or performance of any other obligation by the awarding office's designee, for the grantee, as if such payment of money or performance had been made by the grantee; (f) in the event that the grantee defaults, the grant is terminated, or the grantee vacates the leasehold before the end of the lease term, the NIH IC shall have the right to designate a replacement for the grantee for the balance of the lease term, subject to approval by the lessor, which will not be withheld except for good reason; and (g) the lease and any amendment to it shall be recorded in the land records.

o. **Title Insurance**: Title insurance is required to insure the fee interest in the real property for an amount not less than the full appraised value of the property (not just the Federal portion). The IC may waive the title insurance requirement if the recipient can demonstrate, to the satisfaction of the GMO, that it has fee simple title to the site free and clear of all liens, easements, rights-of-way, and any other adverse interests which would encumber the project, or that the institution is self-insured (e.g., the recipient has sufficient funds available to satisfy any liens placed against the facility or land).

p. **Builder's Risk Insurance:** Builder's risk insurance, which is an allowable cost either for the grantee or the construction contractor, is usual practice and recommended to cover potential losses after initiation, but before completion of construction, caused by theft, fire, vandalism, and other types of accidental loss or damage to the structure. Builder risk insurance generally covers the structure under construction or portion of the structure being modernized, including fixtures designed to be a permanent part of the completed construction or modernization project, which is the minimum coverage

required by NIH. Depending on the policy, it may cover the materials, supplies, machinery or equipment used (or to be used) in the project while at, or in transit to, the project site, or at a temporary location.

q. **Physical Destruction Insurance:**

(1) Physical destruction insurance is required to cover the replacement or repair of any damage that may occur to the facility after completion of construction. The physical destruction insurance policy must insure the full-appraised value of the building from risk of partial or total physical destruction. When Federal participation in the construction or modernization of a building covers only a portion of the cost, the insurance must cover the total cost of the facility because damage to the building could make it unusable and, thereby, affect the Federal interest. The insurance policy must be maintained for the duration of the recipient's ownership of the property unless there is a limitation on the Federal interest (e.g., 20 years).

(2) The IC may waive the insurance requirement if the recipient can demonstrate, to the satisfaction of the GMO, that it is effectively self-insured, i.e., the recipient has sufficient funds to pay for any damage to the facility, including total replacement. This generally is the case for units of government with taxing authority. It also may be the case for a unit of government or non-governmental entity that is sufficiently bonded or insured to cover potential losses. If the recipient is not a unit of government, it must demonstrate that it has sufficient funds to replace or repair the facility or to satisfy any liens, and the source of the funds (e.g., an endowment or special fund set aside specifically for this purpose). The IC shall ensure that the recipient includes in the insurance policies a requirement for the insurance company to notify the IC GMO of any changes in the policy or coverage.

r. **Unresolved Issues Prior to Award:** The IC should make every attempt to resolve all issues prior to making the award. However, under exceptional circumstances (i.e., it is necessary to issue an award before the end of the fiscal year), an award may be made as long as it contains the necessary terms and conditions to address the unresolved issues.

3. *POST-AWARD ACTIVITIES:*

a. **Prior Approval Requirements**: All requests for prior approval must be responded to in writing by the GMO, after consultation with the PO and, when applicable, ORF. In response to a grantee's request, the IC may need to consider the following:

(1) *Deviations from Design Requirements:* When it is in the best interest of NIH and the project, the GMO, in consultation with program staff, may, if appropriate, allow deviations from the applicable *NIH Design and Policy Guidelines* or the *NIH Design Requirements Manual.* For example, this may be the case if NIH funding is only a small percentage of the overall construction, modernization, or major A&R activity. Consideration must include whether or not NIH has authority to deviate from certain requirements, the cost associated with requirement, and the impact on the construction, modernization, or major A&R activity if the requirement is eliminated or modified.

(2) *Plans and Specifications:* Obtain NIH awarding office approval of plans and specifications both before soliciting bids or proposals and before awarding a prime construction contract.

(3) *Alternate Contracting Methods:* Requests may involve use of the following alternative contracting methods in lieu of formal advertising resulting in lump-sum, fixed-price contracts as specified in 45 CFR Part 74. In determining whether to approve a request for use of an alternate contracting/bidding process, NIH should make certain that the grantee assures that there is adequate competition and that the work is to be awarded to a qualified contractor whose costs are competitive. To be approvable, there must be an overall cost and time savings to NIH.

(a) *Construction Management Agreement*: A management services contract under which a grantee contracts for technical consultation during the design stage of a project and for organization and general project oversight of construction activities during the construction phase. In this situation, a construction manager becomes the construction manager at risk and assumes the role of the construction contractor. The construction manager is responsible for the procurement of all construction work under a guaranteed maximum price (GMP) contract (see “Guaranteed Maximum Price Contracts” below).

(b) *Design-Construct Services*: Where design-construct services are contracted, construction firms respond to a request for proposals by submitting building designs that meet the grantee’s performance requirements within a GMP covering all architectural, engineering, and construction services required. This alternative contracting method is used rarely.

(c) *Guaranteed Maximum Price Contracts*: A contract under which a firm assumes total financial responsibility to complete construction of the project at or below a GMP. This is the most common alternative contracting method requested. NIH may generally approve this request when the grantee is at the level of 70 percent of design documents.

(4) *Contingency Fund:* When it is in the interest of the IC and under limited circumstances, the Director, OPERA, may grant a single-case deviation to the 2 percent limit on the contingency fund (see NIH GPS). However, this limit must never exceed 5 percent of estimated construction costs.

(5) *Change in Scope*: Approval of a request involving a change in scope needs to consider how the change may affect the cost of the project, research purpose (i.e., consistency with program intent), or construction schedule.

(6) *Request for Increase in Funds*: If additional funds are not available, the IC may need to consider working with the grantee to modify the proposed construction, modernization, or major A&R activity.

(7) *Extensions:* Review of extension requests must take into account the 5-year limitation of the expenditure of appropriated funds (see "Appropriation limit on expenditure of funds" below).

(8) *Change in Facility Usage/Transfer of Remaining Facility Usage:* See "Post-Grant" below for considerations related to approving an alternate use of the facility or transferring the remaining years of a usage obligation to another facility.

b. **Project Monitoring**:

(1) When monitoring construction, modernization, or major A&R activity, the IC GMO and PO shall consider:

(a) *Progress* based on the proposed schedule to ensure that the grantee is not falling significantly behind schedule.

(b) *Disbursements Reported through the HHS Payment Management System (PMS)* to assess whether the disbursement of funds is consistent with grantee-reported progress.

(c) *Appropriation Limitation on Expenditure of Funds*—the 5-year limitation on the use of obligated funds as specified in 31 U.S.C. 1552.

In accordance with this limitation, grant funds must be expended by the grantee by the end of the 5th fiscal year following the fiscal year that the NoA is issued. When awards are issued in September of a given fiscal year, this further constrains the availability of the funds since, due to the PMS requirement that funds be reported as fully disbursed before September 30 of the 5th fiscal year after the NoA is issued, the grantee then only has 4 years and 9 months available to expend the funds before the end of the 5th fiscal year. While the grantee technically can expend funds during the additional 3 months comprising the 5-year period, the Office of Financial Management, NIH, must take an exceptional action to allow this. Therefore, NIH ICs should be advising grantees that the NIH policy is that, in these circumstances, the funds are available for 4 years and 9 months.

Due to the limitation of the use of obligated funds as discussed in the "Award Activities" section above, NIH retains authority to review and consider requests for extensions without additional funds. The NIH prior approval requirement is communicated to the awardee in the terms and conditions of award.

For example, if a construction project is awarded on September 30, 2005, using FY 2005 funds, the funds generally will be available for expenditure only through June 30, 2010. In this example, if the grantee claims allowable costs that equal or exceed the amount awarded, in order to use 100 percent of the awarded funds, the grantee must report the funds as fully disbursed on the PSC 272, Federal Cash Transactions Report, and have its Financial Status Report, showing all funds obligated and no unliquidated obligations, received and accepted prior to the end of FY 2010 (September 30, 2010). Any funds undisbursed in PMS as of September 30, 2010, will be deobligated on October 1, 2010. The extension of the project period end date beyond September 30, 2010 (in this example) will not prevent the automatic deobligation of funds. Thus, NIH may not approve such extensions. Further, this limitation on the availability of appropriations may limit the grantee's ability to submit a revised FSR within the 15-month period usually authorized. If the appropriation has expired, NIH may not accept a revised FSR with increased obligations and/or outlays, regardless of when it is submitted.

(2) The GMO must ensure that systems are in place to monitor award and post award activity and any required post-performance compliance, e.g., reporting of income received after the period of support, continued use of facility for purposes consistent with those of the award, and recoupment of the Federal share of sales proceeds or amortized value.

c. **Final Inspection and Cost Review**:

(1) After construction, modernization, or major A&R is completed, a final inspection normally is performed to ensure that the project was constructed, modernized, or altered in accordance with the approved design documents. An inspection may be conducted as a site visit, recipient-submitted photographs of space, or other appropriate means, as determined by the IC.

(2) A construction project is considered complete at the point in which the builder turns over to the grantee a facility constructed with NIH grant support, or portion of a facility modernized or modified under a major A&R project, that conforms to the design and specifications approved by the NIH and is available for occupancy. The period of Federal financial interest (usually 20 years) will begin either when the builder turns the facility over to the grantee institution (e.g., the date of the final acceptance of the building) or at the point of beneficial occupancy, whichever comes first.

(3) In addition, a cost analysis of the project is performed to compare actual costs against project estimates to determine if the grantee is entitled to 100 percent of the award amount. For example, when a project is funded, the costs relating to the project are estimated since a construction contract has not been signed, construction has not begun, and the project is not complete. Depending on the bidding climate, the cost of the project may be more or less than anticipated. Therefore, to determine the actual cost of the project, the IC shall request from the grantee a report detailing the actual allowable costs of construction, modernization, or A&R per net square foot/meter and also the actual allowable costs of the entire grant-supported project (administrative costs, architectural and engineering costs, surveys, demolition, fixed equipment, filing of the NFI, and other allowable costs) calculated to net square foot/meter (see "Closeout" below). These amounts must be multiplied by the amount of net square feet/meter of space actually supported under the award.

(4) If the amount of allowable costs equals or exceeds the amount awarded, the grantee is entitled to 100 percent of the awarded amount and the grant can be closed out with a zero unobligated balance. If the amount of allowable costs is less than the amount awarded, the grantee is not entitled to 100 percent of the awarded amount. If the grantee is not entitled to 100 percent of the amount awarded, then the grantee shall report the excess funds as an unobligated balance on the FSR.

d. **Date of Beneficial Occupancy**: The actual date of beneficial occupancy of the facility must be ascertained. This date is important as it establishes the beginning date for the facility usage requirement.

4. ***CLOSEOUT:***

a. The GMO shall send a closeout letter in advance of the project period end date to notify the grantee of the following documents and information required for closeout: (see sample closeout letter provided in Appendix 7).

(1) A final tabulation of net assignable space supported under the award for each program activity.

(2) The actual cost of construction, modernization, or A&R[2] per gross and net square foot/meter.

(3) Date of beneficial occupancy of the completed facility.

(4) A simplified floor plan or space assignment drawing.

(5) An 8"x 10" size photograph of the exterior building and a photograph of each typical interior grant-supported space (i.e., photo of a typical laboratory, office, common room, clinical space, etc.). This information can also be sent on a disk as a digital image file.

(6) A copy of the final Financial Status Report reflecting the Federal and non-Federal share of outlays.

(7) A written assurance signed by an authorized organizational representative stating that the grantee has obtained title insurance and/or physical destruction insurance (if required), and agrees to maintain that insurance in accordance with NIH requirements and comply with the usage requirement for the duration of the Federal interest in the property (e.g., 20 years). If the organization is self-insured against the risks involved, the written assurance must state that the grantee has sufficient funds available to satisfy any liens or to replace and/or repair the facility. This assurance shall state the source of the funds, such as the institution's endowment or other special funds set-aside specifically for this purpose.

[2] For major A&R, this type of activity should take place at the end of the A&R project rather than at closeout of the overall award.

b. Once the closeout information is obtained, the GMO shall revise the award to reflect the actual location of the grant-supported space, cost and amount of net square feet/meters supported under the award. This information shall be used when monitoring the use of space during the usage period. (See sample Post Closeout Acceptance letter provided in Appendix 8).

5. ***POST-GRANT ACTIVITIES:***

a. **Monitoring Facility Usage Compliance**:

(1) The IC is required to monitor grantee compliance with the facility usage obligation through periodic facility and use certifications or reports, site visits, and other appropriate means for the duration of the required usage. NIH has established a self-certification process for monitoring the use of grant-supported space. A letter or other form of communication should be sent to the grantee at least biennially by the GMO to inquire about the use of space (see sample monitoring and follow-up monitoring letters in Appendixes 9 and 10). The grantee is asked to review the activities conducted in the grant-supported space and then certify that the space is still being used for its intended purpose. In addition, the grantee shall provide (a) a list of the PD/PIs occupying the grant-supported space and (b) an indication of their research interests and updated photographs of the grant-supported areas that were provided at time of grant closeout.

The letter also reminds the grantee to seek prior approval if a change is planned and requests that the grantee assure the IC that it continues to provide the required insurance requirements.

(2) The IC will review any request for a change in the planned use of space to determine if the alternate use of space is acceptable or not acceptable and will send a written response to the grantee. If during the required usage period, the facility is no longer used for the original intended purpose and the IC did not provide prior approval for an alternate use, the IC shall advise the grantee and begin activity to recover its share of the investment in the construction, modernization, or major A&R of the real property (see below). Unless alternate requirements have been specified in the governing statute, construction grants and modernization grants and major A&R under research grants are subject to the requirements of 42 CFR Part 52b and the provisions of 45 CFR 74.30 through 74.32 and 45 CFR 74.37 or 45 CFR 92.31, as applicable, concerning real property management, use, and disposition. Major A&R under center or other grants/mechanisms are subject to the provisions of 45 CFR 74.30 through 74.32 and 45 CFR 74.37 or 45 CFR 92.31, as applicable, concerning real property management, use, and disposition. After the required usage

period, NIH will no longer monitor the use of the space. (See sample letter provided in Appendix 11).

(3) A site visit should be performed prior to the end of the usage period (e.g. during the 17th - 20 th years if the usage period is 20 years) to ensure the grantee's compliance with the usage obligation. NIH staff should also note the use and condition of the facility and to ensure that the grant-supported space is fully operational.

(4) IC staff planning a monitoring site visit shall coordinate their visit with other ICs to determine if a review of the other IC's grant-supported space should be performed during the same site visit.

b. **Alternate Usage**: In determining whether to approve an alternate use of the facility, the IC should take into consideration the extent to which the facility will be used for:

- Other health-related purposes consistent with the authorizing legislation of the program;
- Other health-related activities that are consistent with the mission of the IC; or
- Training and instruction in health fields for health professionals or health-related information programs for the public.

c. **Transfer of the Usage Obligation**:

(1) The grantee also may propose to transfer the usage obligation from the original grant-supported facility to a facility of substantially comparable or greater value or utility to carry out the original purpose for which the grant was awarded. The IC may consider the approval of this type of request if all the following provisions are met by the grantee:

(a) The grantee is transferring its obligation to another facility that is found to be equally suitable for the grant purposes and would support the programs originally provided for in the original facility.

(b) The new facility conforms to the minimum standards of construction and equipment as set forth in 42 CFR 52b.12.

(c) The facility to which the usage obligation will be transferred constitutes a bona fide sale involving actual cost to the grantee and

results in additional or improved facilities for purposes of the program (42 CFR 52b.11).

(d) The facility to which the usage obligation will be transferred (exclusive of the land) has a cost or value equal to or greater than the original.

(e) The grantee assures that it will continue to use the facility to which the usage obligation will be transferred for the originally authorized purpose throughout the duration of the remaining usage obligation.

(2) If the above provisions are met, the remaining usage obligation may be released from the original facility constructed with grant funds and transferred to the new facility. The original NFI shall be amended and a new NFI shall be recorded in the local land records in the jurisdiction in which the property is located. In addition, the grantee shall be reminded that it continues to be subject to all other requirements of the award.

(3) If alternate usage is approved, the GMO must revise the NoA to reflect the approval of the transfer in the usage obligation and the allocation of programs to occupy the space. The IC must continue to monitor the grantee's compliance with the usage obligation at the alternate facility.

d. Monitor Post-Performance Compliance: Ensuring that systems are in place to monitor any required post-performance compliance, e.g., reporting of income received after the period of support, continued use of facility for purposes consistent with those of the award, and recoupment of the Federal share of sales proceeds or amortized value.

e. **Recovery of Federal Share**: If during the required usage period the facility is no longer used for the originally intended purpose and the IC does not provide prior approval for an alternate use, the grantee will be required to reimburse NIH for its share of the facility. The Federal share will be calculated as provided in 45 CFR 74.32 or 45 CFR 92.31, as applicable, and the NIHGPS. NIH staff should consult with the Office of Financial Management and the OGC when seeking recovery of the Federal share of costs.

H. OFFICIAL GRANT FILE

The official grant file should be maintained by the IC Grants Management Office until the facility usage requirement has been satisfied. Grant files may then be retired in accordance with the NIH record retention policy (NIH Manual Chapter 1743, "Keeping and Destroying Records"). The IC may also elect to create a working

"monitoring" file folder during the required usage period. This file must also be maintained and retired in accordance with the NIH record retention policy.

I. **RECORDS RETENTION AND DISPOSAL:** All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records," Appendix 1, 'NIH Records Control Schedule,' Section 1100 – General Administration (all that apply), Section 2600 Procurement, Property and Supply Management (all that apply) and Section 4000 - Grants and Awards (all that apply).

NIH *e-mail messages*. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requestor. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to members of Congress or Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

J. MANAGEMENT CONTROLS: The purpose of this NIH GAM is to present the policies, procedures and responsibilities for the management of matching and cost sharing requirements for NIH grants. Office Responsible for Reviewing Management Controls Relative to the NIH GAM: The Office of Policy for Extramural Research Administration (OPERA), Office of Extramural Research (OER).

Frequency of Review: The frequency of review will be based on the outcome of a risk assessment that will determine how often a management control review will be conducted to assess IC compliance with this issuance. Manual issuances with high-risk ratings will receive a more frequent and/or detailed review and will receive the highest priority in the review schedule. A management control review of this issuance will be conducted no less than every 4 years.

Method of Review: OPERA will utilize the NIH Management Controls Compliance Model (MCCM) as described in the GMAC Policy and Procedure Announcement 2000-01. This model will assess IC compliance with the policies stated in this

issuance and determine if policies are correct, clear, and effectively written. The Management Controls Compliance Model Board will be responsible for the development of a customized compliance checklist. This checklist will be used when reviewing files or electronic data to determine compliance with this issuance. A fundamental concept of the MCCM is to use a sampling method instead of an Institute-by-Institute review in order to determine NIH-wide compliance.

Review Reports are sent to: The review findings will be presented in the form of a draft report that will be provided to Chief Grants Management Officers(s) for comment with a copy to the Director, OPERA. A final report will be provided to Chief Grants Management Officers, IC Extramural Activities Directors or Executive Officers, as appropriate, the Deputy Director of Extramural Research, the Director, OPERA, and the Deputy Director for Management.

K. APPENDICES

The following appendices are all sample documents that may be modified, as needed, as long as the changes are consistent with the requirements of this NIH GAM and the NIHGPS.

Appendix 1 Review of Environmental and Other Impacts Document
Appendix 2 Environmental Impact Statement Process
Appendix 3 Grants Management Specialist Checklist
Appendix 4 Program Official Checklist
Appendix 5 Sample Terms and Conditions of Award
Appendix 6 Notice of Federal Interest Letter
Appendix 7 Pre-Closeout Letter
Appendix 8 Post-Closeout Letter
Appendix 9 Post-Grant Monitoring Letter
Appendix 10 Post-Grant Follow-Up Monitoring Letter
Appendix 11 Final Letter at End of Facility Usage Requirement

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